

INTERIM ENERGY PURCHASE AGREEMENT

This INTERIM ENERGY PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the date set forth below, by and between the DEPARTMENT OF WATER RESOURCES with respect to its responsibilities pursuant to California Water Code Section 80000 *et seq.* regarding the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (the "Department") and the Seller set forth on the signature page below (the "Seller").

WITNESSETH:

WHEREAS, the Seller has represented to the Department that it will shut down the Facility (as hereinafter defined) unless it can sell energy therefrom at a price sufficient to cover the costs of the production thereof; and

WHEREAS, operation of the Facility provides substantial benefits to residents of the State of California in the form of renewable energy generation, jobs, economic development and air quality; and

WHEREAS, the Department is willing to purchase energy from the Facility on a short term basis; and

WHEREAS, the Seller is willing to sell the energy from the Facility at the price and upon the terms set forth herein,

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. The following terms shall have the respective meanings in this Agreement:

"Authorized Representative" shall mean the person or persons designated in Appendix B as having full authority to act on behalf of a party for all purposes hereof.

"Billing Address" means the billing address specified in Appendix B or as otherwise specified by the Department.

"Business Day" means any day other than a Saturday or Sunday or a holiday observed by Federal Reserve member banks in the State.

"CAISO" shall mean the California Independent System Operator.

"Contract Allocation Date" means the date the CPUC allocates this Agreement to an Electrical Corporation.

"Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Delivery Point" means the delivery point described in Appendix A.

"Electrical Corporation" means an electrical corporation as defined in 80010(c) of the Water Code.

"Energy" means the Unit Contingent energy delivery and purchase set forth herein in the amount set forth in Appendix A hereto.

"Event of Default" shall have the meaning set forth in Section 6.01 hereof.

"Facility" means the facility referred to in Appendix A hereto.

"Fund" means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.

"Generating Plant Electric Revenue Meter" means the CAISO approved electric meter located at the Deliver Point.

"Guarantee Agreement" means an agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for specific obligations for transactions under this Agreement.

"Guarantor" means the entity providing a guarantee pursuant to a Guarantee Agreement.

"Imbalance Energy" means the difference between the energy scheduled by the Seller's Scheduling Coordinator to the CAISO and the real time energy generated by the Generating Facility as measured by the Generating Plant Electric Revenue Meter.

"Investment Grade" means with respect to the Seller a rating on the Seller's senior long-term unsecured debt obligations of "BBB" from S&P and "Baa" from Moody's.

"Invoice Month" means the calendar month after the delivery of Energy for which an invoice is being issued.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Department.

"Moody's" means Moody's Investor's Services, Inc.

"Non-Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Power Charges" shall have the meaning set forth in the Rate Agreement.

"Priority Long Term Contracts" shall have the meaning set forth in the Rate Agreement.

"Purchase Price" means the price set forth in Appendix A.

"Rate Agreement" means the Rate Agreement between Buyer and State of California Public Utilities Commission ("CPUC") adopted by the CPUC on February 21, 2001 in Decision 02-02-051.

"S&P" means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.).

"State" means the State of California.

"Term" shall have the meaning set forth in Section 2.05.

"Uncontrollable Force" shall have the meaning set forth in Section 5.01 hereof.

"Unit Contingent" means that the Seller's failure to deliver energy hereunder shall be excused: (i) if the Facility is unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the Facility so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Agreement was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by the Department's failure to perform.

"Water Code" means the California Water Code Section 80000 *et seq.*

ARTICLE II PURCHASE AND SALE OF ENERGY

Section 2.01. Purchase and Sale of Energy. Commencing January 3, 2003, Seller shall sell and deliver, or cause to be sold and delivered, and the Department shall purchase and receive, or cause to be purchased and received, the Energy at the Delivery Point, and the Department shall pay the Seller the Purchase Price. Seller will not use the CAISO Imbalance Energy market to provide Energy hereunder except in the circumstance where Seller has scheduled Energy from the Facility and the Facility trips off line. For each MWh of energy delivered to the Department and supplied by the Imbalance Energy market, Department will pay the Seller the lesser of the CAISO Imbalance Energy price or the Purchase Price. The Imbalance Energy price shall not include any penalties that may be imposed by CAISO. The Department's obligation to purchase at the Purchase Price in any hour shall be limited to the lower of the contract Delivery Rate specified in Appendix A or the hourly scheduled delivery rate. Energy

deliveries hereunder shall be on an hourly basis. In no event shall Seller over generate in any hour to meet the sales obligations arising during any other hour. Any unexcused failure to deliver Energy, including any failure to deliver for economic reasons, shall be an Event of Default. The Seller shall be responsible for any costs or imbalance charges imposed on or associated with the Energy up to the Delivery Point. The Department shall be responsible for any costs or charges imposed on or associated with the Energy or its receipt at and from the Delivery Point. In no event shall the Seller have the right to procure electric energy from sources other than the Facility for sale and delivery pursuant to this Agreement. The Seller shall ensure that the Seller's Scheduling Coordinator directs the CAISO to deliver the Generating Plant's monthly electric revenue meter data to the Department with the monthly invoice. In addition, Seller shall not generate energy from fossil fuels or non-renewable resources for the purpose of selling Energy to Buyer under this Agreement.

Section 2.02. Transmission and Scheduling. The Seller shall arrange and be responsible for transmission service to the Delivery Point, and shall obtain Schedule Coordination Services necessary to deliver the Energy to the Delivery Point. Seller shall be responsible for all CAISO costs and charges, including imbalance charges due to deviations from power schedules. The Department shall arrange and be responsible for transmission service at and from the Delivery Point and shall schedule with its transmission providers to receive the Energy at the Delivery Point. All deliveries shall be scheduled in accordance with CAISO requirements to fulfill contractual metering and interconnecting requirements set forth in the CAISO tariff and the implementing CAISO standards and requirements, including but not limited to, executing a standard form CAISO Participating Generator Agreement, so as to be able to deliver Energy to the Delivery Point, which is on the CAISO-controlled transmission grid. The Seller shall be responsible for ensuring that Energy deliveries are scheduled consistent with the most recent rules adopted by the applicable NERC regional reliability council, or its successor. Risks of transmission curtailment or interruptions shall be the responsibility of the Seller up to the Delivery Point.

No later than four (4) hours before Seller's Scheduling Coordinator is required to submit its preferred day-ahead energy schedule to CAISO, Seller shall deliver to the Department its preferred day-ahead schedule and, thereafter, Seller shall immediately deliver to the Department notice of any changes to such preferred day-ahead schedule and the reason(s) therefor. Notwithstanding anything to the contrary herein, in the event Seller makes a same-day change to its schedule for any reason (other than an adjustment imposed by CAISO) which results in an increase to its output (whether in part or in whole), the Department shall have the right, but not the obligation, to take delivery of such energy and to pay for such increase in output at the purchase price per MWh set forth above, which right must be exercised no later than one (1) hour prior to the deadline for the Department, in its capacity as a Scheduling Coordinator, to submit hour-ahead schedules to CAISO, otherwise such right shall be deemed not to have been exercised and the Department shall have neither the right nor the obligation to take delivery of such energy.

Section 2.03. Sources of Payment; No Debt of State. Buyer's obligation to make payments hereunder shall be limited solely to the Fund and shall be payable as an operating expense of the Fund solely from Power Charges subject and subordinate to each Priority Long

Term Power Contract in accordance with the priorities and limitations established with respect to the Fund's operating expenses in any indenture providing for the issuance of Bonds and in the Rate Agreement and in the Priority Long Term Contracts. Any liability of Buyer arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any damages arising as the result of any breach or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Buyer hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System, and Bond Charges under the Rate Agreement, shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.

Section 2.04. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, the Department covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by the Department pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of the Department pursuant this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of the Department and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the Seller under this Agreement.

Section 2.05. Term. The term of this Agreement (the "Term") shall commence on the date of execution hereof and end June 30, 2003; provided, however, Seller shall have the right to terminate this Agreement by providing seven (7) day written notification in the event Seller enters into a long-term power sales agreement.

Section 2.06. Buyer's Right to Terminate without Recourse for Challenge to Revenue Requirement. Seller acknowledges that Buyer's ability to perform under this Agreement is subject to Buyer deriving revenue attributable to each revenue requirement. Accordingly, in addition to any other termination rights herein, and notwithstanding any other provision of this Agreement to the contrary, Buyer shall have the right, but not the obligation, in its sole discretion, to terminate this Agreement at any time without recourse against Buyer for any damages or other costs and without any further obligation or liability of either Party, if an Electrical Corporation or any affiliate thereof initiates any administrative or judicial action or proceeding, or prosecutes or fails to withdraw from or dismiss any existing or pending action or proceeding, which Buyer determines, in its sole discretion, could result in any reduction in amounts derived by Buyer under any revenue requirement. Seller acknowledges that a judicial proceeding has been filed by Pacific Gas and Electric Company with respect to Buyer's current revenue requirement and that the execution of this Agreement by Buyer does not constitute a waiver of the provisions of this Section 2.06 with respect to that proceeding and that unless and until such proceeding is withdrawn Buyer may exercise its rights hereunder at any time.

Section 2.07. Automatic Termination. In addition to any other termination rights herein, and notwithstanding any other provision of this Agreement to the contrary, this Agreement shall automatically terminate without recourse by one Party for any damages or other costs against the other Party, and without any further obligation or liability of either Party, excepting payment by the Department of \$40 per MWh pursuant to Appendix A, subpart (a), in the event the Contract Allocation Date does not occur by January 31, 2003.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Section 3.01. Representations and Warranties of the Department. The Department makes the following representations and warranties:

(a) The Department is authorized and empowered to enter into the transactions contemplated by this Agreement and has taken all requisite action to carry out its obligations hereunder. By proper action of its officers, the Department has duly authorized the execution and delivery of this Agreement.

(b) The execution, delivery and performance by the Department of this Agreement and the consummation by the Department of the transactions herein contemplated have been duly authorized and will not violate any provision of law in any material respect, or any order or judgment of any court or agency of government having jurisdiction thereover, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any material indenture, material agreement or other material instrument to which the Department is a party or by which it or any of its property is subject to or bound.

(c) Assuming due and proper execution hereof by the Seller, this Agreement, constitutes the legal, valid and binding obligation of the Department enforceable against the Department in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Section 3.02. Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller is a corporation or other such legal entity duly organized, validly existing and in good standing under the laws of the state in which it was formed or incorporated, is duly qualified to do business in and is in good standing under the laws of the State, is not in violation of any provision of its articles of incorporation or by-laws, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement. To the best of Seller's knowledge, the Seller is duly qualified to do business in every jurisdiction in which such qualification is necessary.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Seller herein contemplated have been duly authorized by all material requisite action on the part of the Seller and will not violate any provision of law, any order or judgment of any court or agency of government, or the certificate of incorporation or by-laws of the Seller, or any material indenture, agreement or other instrument to which the Seller is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a material default under any such indenture, agreement or other instrument.

(c) This Agreement constitutes the legal, valid and binding obligations of the Seller enforceable against the Seller in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) There is no substantive action or proceeding pending or, to the best knowledge of the Seller, threatened by or against the Seller by or before any court or administrative agency that might adversely affect the ability of the Seller to perform its obligations under this Agreement and all material authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Seller as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Seller hereunder have been obtained.

(e) The Seller is solvent. No action has been instituted, with respect to the Seller, by the Seller or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or petition have been presented or instituted for its winding-up or liquidation.

(f) The Seller will shut down operations of the Facility unless the Department enters into this Agreement to purchase the Energy at the Purchase Price.

ARTICLE IV PAYMENTS

Section 4.01. Billing Period; Billing Address. The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to the Department shall be sent to the Billing Address.

Section 4.02. Payments. The Department shall use its best efforts to ensure that payments for amounts billed hereunder shall be paid so that such payments are received by the Seller by the last Business Day of the Invoice Month or the 10th day after receipt of the bill, whichever is later. Payment shall be made at the location designated by the Seller to whom payment is due. Payment shall be considered received when the Department mails payment. If the due date falls on a non-Business Day of either the Department or the Seller, then the payment shall be due on the next following Business Day. The Seller shall work with the Department to produce the invoice in a format agreeable to the Department.

Section 4.03 Late Payments. Amounts not paid on or before the due date shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money Investment Account rate accrued in accordance with Government Code Section 927.6(6) not to exceed 15%.

Section 4.04 Disputes. In case any portion of any bill is in dispute, the entire bill shall be paid when due. Any excess amount of bills which, through inadvertent errors or as a result of a dispute, have been overpaid shall be returned by the Seller upon determination of the correct amount, with interest accrued at the rate provided in Section 4.03 hereof, prorated by days from the date of overpayment to the date of refund. Neither the Department nor the Seller shall have rights to dispute the accuracy of any bill or payment after a period of two (2) years from the date on which the first bill was delivered.

Section 4.05. Records Retention and Audit.

(a) Records Retention. The Department and the Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of 3 years after final payment under this Agreement. Within three years from final payment under this Agreement, any party to any transaction may request in writing copies of the records of the other party to the extent reasonably necessary to verify the accuracy of any statement or charge. The party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

(b) Audit. Seller agrees that the Department, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Seller agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Seller agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

ARTICLE V UNCONTROLLABLE FORCES

Section 5.01. Uncontrollable Forces. No party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means any cause beyond the control of the party affected, including but not restricted to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority which by exercise of due diligence such party could not reasonably have been expected to avoid and to the extent which by exercise of due diligence it has been unable to

overcome. No party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Any party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice. Notwithstanding the foregoing, an Uncontrollable Force shall not be based on (i) the loss of the Department's markets; (ii) the Department's inability economically to use or resell the Energy purchased hereunder; (iii) the loss or failure of Seller's supply, including, but not limited to, Seller's own generating assets or contracts for the purchase of power or energy; or (iv) Seller's ability to sell the Energy at a price greater than the Purchase Price.

The Department shall not be relieved by operation of this Section 5.01 of any liability to pay for power delivered to the Department by the Seller or to make payments then due or which the Department is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE VI EVENTS OF DEFAULT

Section 6.01. Events of Default. An "Event of Default" shall mean with respect to a party ("Defaulting Party"):

- (a) The failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Defaulting Party by the other party (the "Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such contact person; or
- (b) The failure by the Defaulting Party to provide clear and good title as required by Section 10.01, to have made accurate representations and warranties as required by Sections 3.01 or 3.02 or to perform any other material covenant or obligation hereunder and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party. The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such contact person; or
- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity, of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights, or a petition is presented or instituted for its winding-up or liquidation; or

- (d) The failure by the Seller to provide adequate assurances of its ability to perform all of its outstanding material obligations to the Department under the Agreement pursuant to Section 7.01 of this Agreement, or
- (e) The Defaulting Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Defaulting Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Non-Defaulting Party.

Section 6.02. Remedies for Events of Default. If an Event of Default occurs and is continuing, the Non-Defaulting Party may exercise any remedies available to it at law, in equity, by statute or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party or mandamus or specific performance to compel performance of obligations hereunder.

Section 6.03. Termination. In addition to any other remedy available to the Non-Defaulting Party pursuant to this Article VI, if an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate this Agreement upon written notice (by certified mail to the Authorized Representative specified in Appendix C for the Defaulting Party, and also sent by overnight delivery, other reasonable means) to the Defaulting Party.

Section 6.04. Remedies not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the Non-Defaulting Party is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity or by statute.

Section 6.05. Effect of Waiver and Other Circumstances. No delay or omission of the Non-Defaulting Party to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such default or to be an acquiescence therein and every power and remedy given by this Article to the Non-Defaulting Party may be exercised from time to time and as often as may be deemed expedient by the Non-Defaulting Party. A Non-Defaulting Party may waive any past default hereunder and its consequences. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

ARTICLE VII CREDITWORTHINESS

Section 7.01. Creditworthiness. Should Seller's creditworthiness, financial responsibility, or performance viability become unsatisfactory to the Department in the Department's reasonably exercised discretion, the Department may require the Seller to provide, at the Seller's option (but subject to the Department's acceptance based upon reasonably exercised discretion), either (i) the posting of a Letter of Credit, (ii) a cash prepayment, (iii) the posting of other acceptable collateral or security by the Seller, (iv) a Guarantee Agreement

executed by a creditworthy entity; or (v) some other mutually agreeable method of satisfying the Department. Events which may trigger the Department questioning the Seller's creditworthiness, financial responsibility, or performance viability pursuant to clause (b) above include, but are not limited to, the following:

- (A) The Department has knowledge that the Seller (or its Guarantor, if applicable) is failing to perform or defaulting under other contracts.
- (B) The Seller or its Guarantor has long-term senior lien debt which is rated as Investment Grade and that debt falls below the Investment Grade rating by S&P or Moody's or is below Investment Grade and the rating of that debt is downgraded further by S&P or Moody's.
- (C) Other substantial adverse changes in the Seller's financial condition occur.
- (D) Substantial changes in market prices or other events occur which, in the sole judgment of the Department, materially and adversely impact the Seller's ability to perform under this Agreement.

If the Seller fails to provide such reasonably satisfactory assurances of its ability to perform a transaction hereunder within three (3) Business Days of demand therefor, that will be considered an Event of Default under Section 6.01 of this Agreement and the Department shall have the right to exercise any of the remedies provided for under Article VI. Nothing contained in this Section 7.01 shall affect any credit agreement or arrangement, if any, between the parties.

ARTICLE VIII

[reserved]

ARTICLE IX INDEMNIFICATION BY SELLER

Section 9.01. Indemnification by the Seller. The Seller shall indemnify, defend and hold harmless the Department, and its elected officials, appointed officers, employees, representatives, agents and contractors (each, an "Department Indemnatee"), from and against (and pay the full amount of) any and all any and all actual losses, liabilities, forfeitures, obligations, damages, fines, penalties, judgments, deposits, costs, expenses, charges, taxes, or expenses, including all reasonable fees and expenses of employees, attorneys, expert witnesses, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any legal proceeding, and any special, incidental, consequential, punitive or similar damages incurred by an Department Indemnatee to third parties arising from or in connection with (or alleged to arise from on in connection with): (1) any failure by the Seller to perform its obligations under this Agreement; or (2) the negligence or willful misconduct of the Seller or any of its officers, directors, employees, agents, representatives or subcontractors in connection this Agreement, or

(3) any action arising with respect to the operation of the Facility by the Seller, including, but not limited to, an action resulting from a negligent act or the negligent operation of the Facility by the Seller, the failure of the Seller to obtain or maintain any required permits or governmental approvals, any environmental condition at the Facility or violation by the Seller of or failure by the Seller to comply with any environmental law or the failure of the Seller to pay any tax or governmental charge. The Seller's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Seller which is intended to respond to such events. The Seller shall not, however, be required to reimburse or indemnify any Department Indemnitee hereunder to the extent caused by the gross negligence or willful misconduct of any Department Indemnitee or to the extent attributable to any Uncontrollable Force. An Department Indemnitee shall promptly notify the Seller of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Seller shall have the right to assume the defense of the claim in any legal proceeding and to approve any settlement of the claim. These indemnification provisions are for the protection of the Department Indemnitee only and shall not establish, of themselves, any liability to third parties. The provisions of this Section shall survive termination of this Agreement.

ARTICLE X MISCELLANEOUS

Section 10.01. Title, Risk of Loss. The Seller warrants that it will transfer to the Department good title to the Energy sold under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Point and that Seller's sale is in compliance with all applicable laws and regulations. **THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Risk of loss of the Energy shall pass from the Seller to the Department at the Delivery Point(s).

Section 10.02. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State, without regard to the conflicts of laws rules thereof.

Section 10.03. Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Sacramento, State of California.

Section 10.04 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement. The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 10.05. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Department and the Seller.

Section 10.06. Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 10.07. Taxes. The Purchase Price shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Department for, if the Department has paid, all taxes applicable to the Energy that arise prior to the Delivery Point. If the Department is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Purchase Price does not include reimbursement for, and the Department is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to the Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Department. Either Party, upon written request of the other party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Energy.

Section 10.08. Assignment. This Agreement may be assigned during the Term hereof upon mutual consent of the parties hereto.

Section 10.09. Severability. In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 10.10. Relationship of the Parties. (a) Nothing contained shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties. Each party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

(b) All rights of the parties are several, not joint. No party shall be under the control of or shall be deemed to control another party. Except as expressly provided in this Agreement, no party shall have a right or power to bind another party without its express written consent.

Section 10.11. No Dedication of Facilities. The Seller's undertaking hereunder shall not constitute the dedication of the electric system or any portion thereof of the Seller to the public or to the other party and it is understood and agreed that any undertaking under this Agreement by the Seller shall cease upon the termination of the Seller's obligations under this Agreement.

Section 10.12. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate the Seller to provide any services hereunder directly to or for retail customers of any person.

(b) In performing their respective obligations hereunder, neither party is acting, or is authorized to act, as agent of the other party.

Section 10.13. Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 10.08.

Section 10.14. Liability and Damages. No party's directors, members of its governing bodies, officers or employees shall be liable to any other party or parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder.

Section 10.15. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 10.16. Notices. Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram or fax or other means agreed to by the parties to the addresses set forth in Appendix B.

Section 10.17. Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a party's own negligence) or otherwise, shall either party be liable to the other party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise.

Section 10.18. Application of Government Code and the Public Contracts Code. Seller has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Department has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the 31th day of December, 2002.

DEPARTMENT OF WATER RESOURCES

with respect to the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System

By: _____
Name:
Title:

[SELLER]

By: _____
Name:
Title:

Energy

Facility: Sierra Pacific Industries, 5 MWh biomass fueled generation plant located in Sonora, California.

Purchase Price: \$ 52.75 MWh

(a) \$ 40 MWh for each day to and including the earlier of the Contract Allocation Date and January 31, 2003, or

(b) If the Contract Allocation Date does occur by January 31, 2003, for each day after the Contract Allocation Date, a \$/MWh price determined in accordance with the following formula:

$$A + ((A-B) \times C) \div [D - C]$$

A = \$ 52.75 MWh

B = \$40 MWh

C = days from and including January 3, 2003 to and including the Contract Allocation Date

D = 179

Delivery Rate: 5 MW

Delivery Point: At the interconnection of the Facility, on the high side of the Facility's step-up transformer, with the CAISO controlled transmission grid. All delivered Energy shall be metered on a real-time basis at the interconnected substation. A copy of the meter information shall be included in each monthly invoice. All meters and equipment used for measurement of Energy shall be provided, owned, maintained, inspected, tested and read pursuant to CAISO requirements.

Addresses

Department:

Billing Address: DWR/CERS
Settlements Unit
Doreen Singh
3310 El Camino Avenue, Suite 120
Sacramento, CA 95821
(916) 574-0309 ph
(916) 574-1239 fax

Notice Address: DWR/CERS
3310 El Camino Avenue, Suite 120
Sacramento, CA 95821

Authorized Representative: Attn: Executive Manager Power Systems
(916) 574-0339 ph
(916) 574-2152 fax

Company:

Notice Address: Sierra Pacific Industries
19794 Riverside Ave.
Anderson, Ca. 96007

Authorized Representative: Bob Ellery
(530) 378-8179 ph
(530) 378-8139 fax

**AMENDMENT TO
INTERIM ENERGY PURCHASE AGREEMENT**

This AMENDMENT TO INTERIM ENERGY PURCHASE AGREEMENT (the "Amendment") is made and entered into as of the date set forth below, by and between the DEPARTMENT OF WATER RESOURCES with respect to its responsibilities pursuant to California Water Code Section 80000 *et seq.* regarding the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (the "Department") and the Seller set forth on the signature page below (the "Seller").

WITNESSETH:

WHEREAS, the Department and the Seller have entered into an Interim Energy Purchase Agreement (the "Agreement"), dated December 31, 2002; and

WHEREAS, the Department and the Seller wish to made certain changes to the Agreement to reflect the fact that the Contract Allocation Date is expected to occur on February 27, 2003; and

WHEREAS, all other terms and provisions of the Agreement shall remain the same,

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions. All capitalized terms not otherwise defined in the Amendment shall have the meanings set forth in the Agreement.

Section 2. Amendment of Section 2.07. Section 2.07 of the Agreement is hereby amended to read as follows:

"Section 2.07. Automatic Termination. In addition to any other termination rights herein, and notwithstanding any other provision of this Agreement to the contrary, this Agreement shall automatically terminate at 12.01 AM on March 1, 2003 in the event the Contract Allocation Date does not occur on or before February 27, 2003 without recourse by one Party for any damages or other costs against the other Party, and without any further obligation or liability of either Party, except for the Department's obligation to pay the Purchase Price of \$40.00 per MWh pursuant to Appendix A, subpart (a) or \$38.00 per MWh pursuant to Appendix A, subpart (b), as appropriate, for Energy delivered which has accrued but remains unpaid."

Section 3. Amendment of Purchase Price. The Purchase Price as set forth in Appendix A of the Agreement is hereby amended to read as follows:

“Purchase Price: \$52.75 / MWh in the event the Contract Allocation Date occurs on or before February 27, 2003, payable as set forth below, and, in the event the Contract Allocation Date does not occur on or before February 27, 2003, the Purchase Price shall be only as set forth in (a) and (b) below:

(a) \$ 40.00 / MWh for each day from January 3 to and including January 31, 2003, or

(b) \$ 38.00 / MWh for each day from and including February 1, 2003 to and including February 28, 2003, or

(c) If the Contract Allocation Date does occur on or before February 27, 2003, \$59.17 / MWh for each day from and including March 1, 2003.”

Section 4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

Section 5. Amendment. Neither this Amendment nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Department and the Seller.

Section 6. Counterparts. This Amendment may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument. Any signature page of this Amendment may be detached from any counterpart of this Amendment without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Amendment identical in form hereto but having attached to it one or more signature pages.

Section 7. Severability. In the event that any of the terms, covenants or conditions of this Amendment, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Amendment and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Amendment.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representative as of the 31st day of January, 2003.

DEPARTMENT OF WATER RESOURCES

with respect to the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System

By: _____
Name:
Title:

[SELLER]

By: _____
Name:
Title: